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IN THE
COURT OF APPEALS OF INDIANA

Y.F.,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0511-JV-1102
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Geoffrey Gaither, Judge
Cause No. 49D09-0504-JD-001587

SEPTEMBER 19, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

ROBERTSON, Senior Judge

STATEMENT OF THE CASE

The State filed a petition alleging that Y.F. was a delinquent child in that he committed an act that would be the Class D felony of false reporting if committed by an adult.[1] A fact-finding hearing was held in which Y.F. was found to be a delinquent child and was placed on probation. This appeal is from that judgment.

ISSUES

Y.F. states the issue as:

> The judge relied on hearsay, double hearsay and inadmissible (and never admitted) evidence and uncorroborated and tainted investigation by the school dean to find Y.F. to be a delinquent child.

FACTS

An overview of the facts shows that Jason Finke is dean of students at the Guion Creek Middle School. He was on his way to lunch at the school and noticed that Y.F. and two other boys were sitting outside of a classroom as punishment. While at lunch Finke was contacted by a secretary and told that there had been a bomb threat. Finke returned to his office and his voice mail had a message from an unidentified voice:

> 'The following is the recording of the Marion County Sheriff's Department number one center for the date of April 4th, 2005 being recorded from IM 30, reference an investigation at 4401 West 52nd Street. Beginning time 12.56.13 "(inaudible) there is a bomb in the school" Ending time 12.56.17, this audio was recorded by (inaudible) audio specialist, Marion County, Indiana.[2]

That portion of the message "(inaudible) there is a bomb in the school" apparently relayed the voice of the caller. Finke recognized it as the voice of Y.F.

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[1] . A person who reports, by telephone, that the person or another person has placed or intends to place an explosive in a building knowing the report to be false commits false reporting as a Class D felony. Ind. Code § 35-44-2-2(c).

[2] The street address is the address of Guion Creek Middle School.

Finke testified that the three boys setting outside of their classroom were within a hundred feet of a pay phone. He also testified that there were about 250 students in the cafeteria for lunch and about 30 to 40 students in a nearby gym, all in the immediate vicinity.

Finke played the tape for some teachers. His "voice line-up" included three voices. One of Y.F.'s teachers who was with Y.F. for an hour every day could not identify the voice as being Y.F.'s voice. The principal, who only heard two voices, identified one as being Y.F. because the other voice was not that of Y.F.

Additional facts will be disclosed as needed.

DISCUSSION AND DECISION

The admissibility of evidence is within the sound discretion of the trial court. *Curley v. State*, 777 N.E.2d 58, 60 (Ind. Ct. App. 2002), *trans. denied.*. We will only reverse a trial court's decision on the admissibility of evidence upon a showing of an abuse of that discretion. *Id.* An abuse of discretion may occur if the trial court's decision is clearly against the logic and effect of the facts and circumstances before the court, or if the court has misinterpreted the law. *Id.*

According to the transcript of the denial hearing, the bomb threat was called into 911 and recorded on a digital recording machine. The voice mail on Finke's telephone was sent by Metropolitan School District Police Office Karras. Finke apparently made a cassette tape recording of the voice mail notification of the bomb threat. Finke was questioned by the State about the cassette tape and KF's counsel made an objection based upon a lack of a foundation to authenticate the tape.

At this point the State advised the trial court that the recording fell into the business records exception to the hearsay rule and that it would submit an affidavit made by an employee of the Marion County Sheriff's Department that the tape recording is an accurate representation of the original bomb threat call. The State asked the trial court to take the matter under advisement until the end of the case. However, the affidavit is not in the record nor can we find any other reference to it. Additionally, we find no reference in the record that the State offered the tape into evidence.

In any event we are of the opinion that Ind. Evidence Rule 1002 disposes of the matter. That rule, as pertinent to the issue, states that to prove the content of a recording, the original recording is required. The cassette tape under consideration here is not the original, and therefore its admission (if it was admitted) is contrary to Evid. R. 1002. Obviously, the removal of Finke's tape from the record eliminates any consideration of false informing by Y.F.

CONCLUSION

The admission of the tape is reversible error. In the event the tape was not admitted it was error to consider it as evidence.

Judgment reversed.

SHARPNACK, J., and RILEY, J., concur.